

**BROWNFIELDS STUDY GROUP
MEETING
March 30, 2005**

I. Attendees

John Angeli, city of Fond du Lac
John Antaramian, city of Kenosha
Margaret Brunette, DNR
Michelle Chalice, DNR
Gloria Chojnacki, SEH, Inc.
Margaret Earnest, TN&Associates
Laurie Egge, DNR
Darsi Foss, DNR
Mark Giesfeldt, DNR
Stuart Gross, Northern Environmental
Michael Harper, Env. Detectives
Art Harrington, Godfrey & Kahn
Johanna Howard, city of Milwaukee
Maureen Hubeler, DNR
Bob Karnauskas, Natural Resource Tech.
Bruce Keyes, Foley & Lardner
Larry Kirch, City of LaCrosse
Trent Kohl, We Energies
Dan Kolberg, DNR

Dennis Lawton, STS Consultants
Percy Mather, DNR
Mark Mobley, Miller Eng. & Scientists
Tom Mueller, TEMCO
Kirk Peterson, BT², Inc.
Boyd Possin, ECCI
Michael Prager, DNR
Al Rabin, Dept. of Commerce
Joe Renville, DNR
Andrew Savagian, DNR
Jan Schroeder, city of Kenosha
John Stibal, City of West Allis
Joy Stieglitz, Vandewalle & Assoc.
Mark Thimke, Foley & Lardner
Benji Timm, city of Milwaukee
Mary Ellen Vollbrecht, DNR
Scott Wilson, Ayres Associates
Kennard Wragg, Env. Detectives

II. Welcome, Introductions, Agenda Repair

III. State Budget and Brownfields

[To view the RR Program's information on the budget, please use the following web link:
http://www.dnr.state.wi.us/org/aw/rr/financial/rr_state_budget.html]

Mark Giesfeldt reviewed the governor's budget and how it affects brownfields initiatives; most important item in budget was the removal of the sunset on the vehicle impact fee, which funds staff and grants; it remains at \$9.00 per vehicle; in the last budget, the governor proposed \$10.50 but that was rejected by the Legislature; bonding was proposed at \$3 million, in addition to cash; the governor funded DNR Brownfield Site Assessment, Greenspace and Commerce brownfield grants at the status quo; 10 vacancies in the RR Program were cut; some program revenue positions were converted to Environmental SEG; some GPR positions were moved to SEG

Tom Mueller: What is the shortfall in covering projects?

Giesfeldt: Difficult to say, as projects are funded in parts, etc.

Mueller: What is going on with brownfields staff and federal funds?

Giesfeldt: After last budget cuts, we are now at 50/50 federal and state funding; future federal cuts could impact the staff base; federal funds aren't as plentiful as they have been in the past, and DNR has less "reserve" funds to help offset that

Bruce Keyes: Is it still a "no policy" budget?

Giesfeldt: Yes, this is our understanding

Mueller: A lot of news has come out about the excess PECFA funds

Boyd Possin: The program is averaging about \$1 million in the black a month

Mueller: Can we get some of this revenue for brownfields?

John Antaramian: Gas tax is going up 8 cents in the next month; can we dedicate the excess funds, instead of a constant new revenue stream?

Keyes: Not sure if we want to explore, but may want to consider expanding PECFA to cover USTs that have a financial need.

Possin: The history on PECFA was that it was to deal with newer, leaking tanks; however, it has turned into a "brownfields-type" cleanup program

Giesfeldt: If there is interest, the group will need to bring in Commerce staff on this

Art Harrington: Any idea on how this would be received at Commerce?

John Stibal: We should take this issue up in a smaller group, and not today

Antaramian: The Study Group has assisted in helping the Commerce-DNR dialogue in the past, so why can't it be done with the DNR-Commerce PECFA issues.

Al Rabin: Commerce is leveraging about \$17 in other investment for each Commerce brownfields grant

DNR will send out an email to Study Group asking if a small group would like to get together to explore this idea

IV. Brownfields Legislation Update

Senator Roessler's office has been very busy and diligent in moving the 8 bill drafts the Study Group has requested. (Please see handout on this topic).

V. DNR's Green Tier Program and Its Application To Brownfields

Mark McDermid from DNR provided the background to the Green Tier initiative; Green tier is a new law in Wisconsin, developed to achieve superior environmental performance; it is a series or set of tools; for those folks who are set to achieve superior environmental performance, there are better ways to work together

Use of Tiered System

- Tier 1 – recognition program. Through logo, publicity, reduced inspection, etc., will recognize them
- Tier 2 – DNR is authorized to provide incentives to those who promise/achieve superior environmental performance

[For more information on the Tier system and other Green Tier information, meeting materials will be posted on the DNR's Brownfields Study Group web site at: <http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm>]

Use of Charters: Based on Bavarian and Holland's pacts and covenants. This is new, having a strong linkage to law vs. previous efforts.

Compliance Audits: another part of the Green Tier laws.

Where DNR is in implementing Green Tier?

McDermid: Process we are using to implement green tier is different; we're trying first to build capacity inside the DNR, in stages; Step 1: have a handful of companies come through process; the key is not to tax their time and energy; we have three companies in Tier 1 and one in Tier 2; we also have three organizations interested in developing charters

Environmental Management Systems (EMS)

They're necessary to participate in the program; 300 companies say they have an EMS

McDermid: The approach will not exclude walk-ins

Where would there be applicability to brownfields?

This is prefaced on the fact that these discussions are in the early/preliminary stages; U.S. EPA is being engaged in this topic.

Harrington: Great program, allows us to think outside the box; my question is, we are talking residential, commercial and recreational uses; is there an opportunity to achieve superior environmental performance?

McDermid: Superior environmental performance is defined in law; demonstration of superior environmental performance is immediately available – to protect or restore natural areas; i.e. going beyond what the regulations tell you that you have to do

Keyes: I have an audit question -- if a company did an audit, and worked with the agency, does this protect from a citizen's suit?

McDermid: No, it does not protect them; right now, we have no record of a citizen's suit during the five-year pilot Green Tier program

Keyes: Have we approached the citizen's groups about using some discretion and letting the company implement the compliance items prior to a law suit?

McDermid: No, we haven't done that; we encourage those groups to work on and be involved in the individual charters

Joy Stieglitz: When you and I talked a couple of months ago, we talked about expanding this to municipalities; could municipalities gain a Green Tier label of superior performance? Is there a way to evaluate the performance of municipalities by looking at how they perform across multiple measures; such as if they have adopted/are implementing/enforcing a series of stringent environmental regulations, such performance ordinances (e.g. shoreland protection); are they encouraging best management practices; and are they insisting that all new greenfield development, as well as redevelopment, meet green tier-type standards?

McDermid: EMS is not prevalent in most local governments; Brown County may be an exception; we may need to build the capabilities; the opportunity to brand Wisconsin as green communities to attract green businesses

Mark Thimke: Our innovation from this group has been to make large changes to state laws that assist large categories, not just company specific

McDermid: And we expect that to continue

Harrington: What I see as an opportunity is to go outside all the legislation

McDermid: Allow us to pilot under these charters under future legislative changes

Prager: The flexibility may be on a multi-media basis – can we get some incentives out of this?

McDermid: This is something that we can go ahead with; we'll need to get someone to evaluate NR 700 and the Green Tier provisions on EMS

Foss: Can we get NR 700 approved as an EMS? Could we then look to see if we could get superior environmental performance?

Keyes: May be valuable to go back into the Valley and look at it; there is also a LEED's system

McDermid: How do we leverage what we have done?

Harrington: If negotiations on NR 700 as an EMS are not successful, we should still look to amend Green Tier to allow us to apply Green Tier to brownfields cleanup and redevelopment/reuse

Antaramian: I have concerns with the final Green Tier legislation, because it did not make the fundamental changes; I would like to see us look at a separate approach to implementing the concepts of superior performance, EMS and such for municipalities

Giesfeldt: Would like to see something go ahead on Green Tier; subgroup may be a good idea

Study Group agreed to have a small subgroup put together to discuss the applicability of Green Tier to municipalities

VI. National Brownfields Association (NBA)

Antaramian: Wisconsin will be forming a local chapter of the NBA; it will not take the place of the Study Group; it will support and supplement the Study Group's legislative mission; this is a

national group based in Chicago, and the Study Group will be the main public policy arm on brownfields; other group will be used to support our efforts

Study Group members agreed they want to make sure the Study Group remains the same, and is not impacted by this group

VII. Sustainability Conference

Foss: Conference on sustainability will be held at the University of Wisconsin-Milwaukee in October, 2005; more details to follow

VIII. Supreme Court Decision (Aviall)

Mark Thimke and Mark Giesfeldt went over presentations regarding the Aviall case; prior to the Aviall decision, if you have a property where there are multiple potentially responsible parties, you could cleanup under state law and recover costs using the federal Superfund law; with Aviall that practice was called into question; as of today we know of five sites in Wisconsin where people have identified Aviall as an issue

Giesfeldt: The options available in Wisconsin, post-Aviall are: administrative – state negotiated agreement; judicial, with WI Dept. of Justice, or go to EPA and work with them under the Superfund Alternatives Process; also, local governments have cause of action language in state statutes under the Spill Law, 292.33, Wis. Stats.

Darsi Foss: Also, the Study Group discussed a private cause of action in 1998 and 1999

Small group will explore this issue and determine options; Mark Giesfeldt will be the lead on Aviall

Lunch

IX. Chapter 30 Permits: What's new?

Mary Ellen (Mel) Vollbrecht from the Water Division provided Study Group members an overview of changes to the Chapter 30 Permit process, including the section of the statutes about when and how people can make alterations, or put structures near or on water; there are 1,000's of changes authorized each year

Vollbrecht: DNR wrote 12 administrative rules over the past year, for placing a structure or making an alteration; three-tier system; 16 activities are exempt from permits, and exemptions are available in certain waters and not in others

Vollbrecht: Created 30 general permits -- standards are in the rule; need to respond within 30 days to general permits, new culverts, bridges, or more extensive dredging; so, can do either general permit or go under exemption

Vollbrecht: For brownfields, the exemption won't be available, but some general permits may be; all of the general permits and exemptions have eligibility checklists, available on the DNR web

site, for the emergency rules; new info when final rules approved by the Legislature; 50 percent of activity under emergency rules have been under exemption and general permits, and all full Chapter 30 permits require an opportunity for an informational hearing

Anataramian: For dredging of harbors, what is the DNR doing about how to deal with dredged materials? Other states allow you to put this back in the lake

Vollbrecht: New legislation allows DNR to now write rules to allow this in certain circumstances

Antaramian: In Kenosha, I have a harbor that continuously refills with sand; due to a creek, I have contaminants that are just above acceptable levels -- What is the state doing to help communities? Last time, this cost the city of Kenosha \$1 million

Vollbrecht: Act 118 may let you bypass the source of contamination via the creek; the things in the rule that have not changed:

- large dredging projects;
- wetland regulations; working to reconnect wetlands and chapter 30 permits; and
- lake bed grants and bulk head lines have not changed

Vollbrecht: In Act 118 there is an exception to over-water boathouses; now you can have more than one slip for over-water boathouses in blighted areas

Vollbrecht: Hazardous standards only apply to dredging projects; brownfields can use general permits and exemptions

Mueller: What happened to the 75-foot rule on navigable water?

Vollbrecht: Remember, Chapter 30 is about “in the water.” You may be talking about shoreland zoning -- that rulemaking is still ongoing

Vollbrecht: Chapter 30 is a joint permit where you apply both to federal ACE and DNR

X. Other Updates

One Clean-up Program MOA – EPA Initiative

Percy Mather updated the Study Group about progress with EPA; both sides are clarifying responsibilities; the MOA will give comfort that EPA isn’t interested in sites that have been cleaned up under NR 700

Recent Tour of the City of Milwaukee and “Lessons Learned”

Benji Timm and Johanna Howard provided information to the Group about their March 15th tour of brownfield properties in Milwaukee; some of the lessons the city learned in working on these types of sites included:

- city-led projects work best with a vision/plan;
- older retail areas can be cleaned up and reused, if you assemble sites;
- demolition moneys at DNR and Commerce are the reason why certain projects “go” at all;
- PECFA and EPA petroleum funds work well together;
- it is a complex undertaking to make all these funds work together; and
- the reimbursement basis of grants can be a challenge

Bob Karnauskas: Milwaukee has done a good job working with non profits to make these projects work

Scott Wilson: Milwaukee has done a great job -- can you touch on the lessons learned with your Revolving Loan Program?

Johanna Howard: Bev Craig has left and she was doing most of it; but we will be calling Hennepin County and seeking their wisdom

Al Rabin: Congrats to Johanna and Benji on their work, especially supporting the application and awarding of funds to minorities

State Brownfield Grants

Commerce Brownfields Grants

Rabin: We wanted to reciprocate and thank DNR for their support; there are \$4 million left; very competitive

Land Recycling Loan

Maureen Hubeler: the DNR received 10 Intent To Apply (ITA) letters last December; current funding list is through July of this year; Delevan and West Allis will be going ahead, potentially, with their request; application deadline dates are August 1 and October 1, 2005; \$1.2 million has been returned by other projects; \$9.6 million is currently in the fund and \$8 million is allocated to current projects

DNR Site Assessment Grants

Dan Kolberg: We gave out 45 SAGs in the sixth round this year, 36 small grants and 9 large grants; twice as much money as available was requested; we did have a high number of ineligible grants this past year, and will want to talk about this at a future date

DNR Greenspace Grants

Prager: Hopefully we'll have \$1million over the next biennium to give out in grants; if so, we'll be giving out \$500,000 per year to eligible projects

Wisconsin Brownfields Insurance Program (WBIP)

Prager: We're down to two final candidates for the state's brownfield insurance program; the next step includes further negotiations with the preferred carrier; we also need to negotiate the endorsements; we'll be working first on the policy and then the contract on the insurance policy

Adjourn